

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9041 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BALDEVBHAI SHANTILAL CHAUHAN

Versus

INDIAN INSTITUTE OF MANAGEMENT

Appearance:

MR SR BRAHMBHATT for Petitioner
NANAVATI ASSOCIATES for Respondent No. 1
MR PREMAL R JOSHI for Respondent No. 3

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 28/07/98

ORAL JUDGEMENT

The petitioner was working as Site Engineer (Senior) with the respondent Indian Institute of Management (hereinafter referred to as 'IIM'). The respondent issued advertisement for the post of Executive Engineer on 24.5.1997. The petitioner also applied and he was interviewed. Respondent No. 3 Mr. H.J. Vadher has been selected. The say of the petitioner is that he

ought to have been given appointment on the post of Executive Engineer as he not only fulfills the qualification but also suitable person for the job.

2. Mr. Brahmhatt, learned counsel for the petitioner, has raised three fold contentions. Firstly, it is argued that as per the advertisement the post was reserved, as such respondent No. 3, a person from general category could not have been appointed. It is not in dispute that there is only single post. In view of this, the said post cannot be said to be reserved post. This is now well settled by the decision of the Supreme Court in the case of POST GRADUATE INSTITUTE OF MEDICAL EDUCATION AND RESEARCH VS. FACULTY ASSOCIATION AND ORS. reported in JT 1998(3) SC 223. However, it is submitted by Mr. Brahmhatt that as per the advertisement the post was reserved and therefore unless the same is dereserved, it is incumbent upon the respondent to consider the same as reserved post. I have seen the advertisement appearing at page 25 of the paperbook which says "reservation for SC/ST/OBC/Ex-Serviceman/physically handicapped existed as per the Government of India norms. This does not indicate that the post is a reserved post. It simply says reservation as per the norms. The settled legal position being that in case of single post there can be no reservation. In view of this I do not find any merit in the first contention raised by the learned counsel for the petitioner.

3. The second contention raised by the petitioner is that the respondent IIM having the policy first to explore suitable candidate from feeder cadre for making appointment which has not been followed in the present case. An affidavit has been filed by Mr. N.V. Pillai, Personnel Officer, stating that the Institute does conduct an exercise, as to how many of the existing employees are in the zone of consideration and their calibre to occupy the position under consideration. It is further submitted that the Institute on its own judgement finds that internally candidates are not available to take up the new responsibility then the Institute may go for public advertisement; but put up an internal advertisement or invite all the candidates who are in a grade just below the grade of the position for which replacement is sought to participate in the selection process. Dealing with the present case it is stated that since the petitioner was the only candidate in the zone of consideration it was decided to advertise externally. Mr. Brahmhatt submits that it is not the case of the respondent that a suitable candidate was not available but the case of the respondent is that the petitioner was the only candidate in the zone of

consideration. He has also invited my attention to various testimonials to show the performance of the petitioner. Be that as it may, it is a matter of practice and subjective satisfaction of the authority. It does not reflect in the advertisement on the merit of the petitioner but the authorities considered that there should be still wider range of candidates for selection, such a decision can be taken. Even otherwise the petitioner himself has appeared for the interview before the Selection Board and therefore the said contention is not available. In view of this, I do not find any merit in this contention also.

4. It is lastly contended that respondent No. 3 does not fulfill the minimum experience of 10 years. He has invited my attention to the statement made at page 50 which indicates that respondent No. 3 is having only 9 1/2 years experience. The contention of the petitioner is that there is no provision for relaxation of experience. An affidavit has been filed by respondent No. 3 wherein he has stated that prior to joining IIM he has more than 10 years experience. He has given details of the experience in Annexure-A which clearly indicates that he has experience of 10 years. The say of Mr. Brahmbhatt that no such affidavit has been filed by the Institute if they had considered that respondent No. 3 fulfills the requisite experience of 10 years. Having read the affidavit of respondent No. 3 and Annexure attached thereto, I am satisfied that respondent No. 3 has experience of 10 years. In view of this, I am not inclined to interfere with the selection made by the respondent IIM. This Special Civil Application is accordingly rejected. Notice discharged.

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